



ENVIRONMENTAL REVIEW COMMISSION
April 09, 2014
Room 643 of the Legislative Office Building

The Environmental Review Commission (ERC or Commission) met on Wednesday, April 09, 2014 at 08:00 AM. The meeting was held in Room 643 of the Legislative Office Building. Senator Brent Jackson presided.

Members present were: Senator Brent Jackson, Chair; Representative Mike Hager, Chair; Representative Ruth Samuelson, Chair; Senator Austin M. Allran; Senator Andrew Brock; Senator Fletcher L. Hartsell, Jr.; Senator Gene McLaurin; Senator Ronald Rabin; Senator Bill Cook; Representative Roger West; Representative Rick Catlin; Representative Jimmy Dixon; Representative Pricey Harrison; Representative Chuck McGrady and Representative Chris Millis. Also present were the following: Dr. Jeff Warren, Senate Senior Policy Advisor; Emily Wilson, House Senior Policy Advisor; Mr. Jeff Hudson, Commission Counsel; Ms. Jennifer McGinnis, Commission Counsel; Mr. Jeff Cherry, Commission Counsel; Ms. Jennifer Mundt, Commission Analyst; Mrs. Mariah Matheson, Research Assistant; Tori Bragg, Lindsey Dowling, and Towers Mingledorff, Commission Clerks; and Sergeants-At-Arms Bill Bass, John Brandon, Ernie Sherrell, and Anderson Meadows.

Senator Brent Jackson convened the meeting at 8:10 AM and welcomed the attendees to the final ERC meeting. He announced the Sergeants-At-Arms and wished Senator Andrew Brock a happy birthday.

Sen. Jackson briefly discussed the special ERC meeting to be held on Tuesday, April 22 at 1:30 PM in room 643. The will receive comprehensive updates from stakeholders on the progress regarding the Dan River cleanup and planning for coal ash remediation for the remaining plants across the State on April 22nd. The chairs ask that the members make time for this meeting, as we feel the legislature needs to remain educated and briefed on this important issue. Those of you in the public, who are interested, please note the time is 1:30 PM on Tuesday, April 22 in room 643.

Sen. Jackson held a vote to approve the minutes from the January 15, 2014 meeting of the Commission. Senator Ron Rabin gave the motion and Senator Gene McLaurin seconded.

Sen. Jackson gave a brief overview of the agenda. The members have received all of the recommendations via email and heard most of them at last month's meeting. There are some new and modified recommendations, and Senator Jackson allows staff to provide an overview of each recommendation and allow for questions after each presentation. Senator Jackson does not believe that members found the recommendations controversial. Unless there is opposition, it is



Senator Jackson's intention, to take a single vote on the legislation and report as a whole. If there are no objections to voting on the legislative recommendations and Commission report as a whole, then Senator Jackson will move for a vote of approval after staff has concluded briefing the Commission on all of the legislative proposals and any questions have been asked and answered.

Sen. Jackson moved into the legislative proposals and the report to the 2014 Regular Session of the 2013 General Assembly. Sen. Jackson asked Commission staff to give a brief overview of the legislative proposals from the Stormwater Working Group that Senator Jackson and Representative Ruth Samuelson lead. The two pieces of legislation recommended were "Clarify Gravel under Stormwater Laws" and "Amend Isolated Wetlands Regulation".

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Representative Chris Millis asked if it can infiltrate the subsoil then that should be a part of the study.

Rep. Samuelson responded that the study will look at that, including what type of aggregate is there, what type of soil, and soil preparation, etc.

Rep. Millis stated that at the end of the study individuals will get credit because it won't be seen as built-upon area.

Rep. Samuelson answered that in the areas of sandy soil they can get credit for it.

Mr. Jeff Hudson stated that page one has all of the factors that the study is supposed to look at. If the study finds certain circumstances that gravel is pervious then they would get credit for that.

Representative Rick Caitlin asked what the overall intent of this bill is. Is it to lower the amount of runoff?

Rep. Samuelson stated that the concern that came up was that it was inconsistent between the old legislative language that always considered gravel as a built-upon area. Then we took the other extreme to treat it as though it was not built-upon. The intent of the bill is to know when it is pervious and when it is not pervious. When a lot of infill and redevelopment of old properties used aggregate, it changed their ability to develop those sites.

Sen. McLaurin asked if the Department of Environment and Natural Resources (DENR) had expressed concerns. Can you give an overview?

Rep. Samuelson responded that they like it. They like the part where it changes "only wooden slats" to slats. We asked them to study it for \$110,000.



Rep. Samuelson spoke about the “Amend Isolated Wetlands Regulation” bill draft, as there is still a lot of debate about the bill. Soil differences in different parts of the State created the line that's already in statute, which is what we used. If the amount of impacts of isolated wetlands is less than or equal to 1 acre of isolated wetlands east of I-95 or less than or equal to 1/3 acre of isolated wetlands west of I-95 then no permit is needed.

There were questions asked as to how this bill would interface with the process in place with the rules review language in House Bill 74 ([Regulatory Reform Act of 2013](#)). Rep. Samuelson said that will also be taken into consideration. In that sense this bill still has more work to do. The federal government is making changes, which will also have to be taken into consideration. This bill will have more debate and will need more discussion as it goes.

Representative Pricey Harrison stated that she was still trying to remember the origin of this issue.

Rep. Samuelson stated that there was inconsistency on how it was being applied. When we did the regulatory reform public hearings a few years ago, we heard stories about inconsistencies. We were recognizing some need to clarify what an isolated wetland is. We worked with Mr. Tom Reeder and this is our attempt to clarify inconsistent applications of it.

Rep. Harrison asked about the LRC Committee on Wetland and Stream Mitigation?

Rep. Samuelson stated that there are some differences between committees. We will work with the LRC Committee on Wetland and Stream Mitigation to see what they've learned.

Sen. Jackson asked commission staff to give a brief overview of the legislative proposals from the Water and Sewer Working Group that Senator Hartsell and Representative Hager led. The two pieces of legislation recommended were “DENR Study IBT Laws” and “PED Study of Water and Sewer Systems”.

Sen. Jackson thanked staff for their report and asked members if there were any questions.

With no questions to be had, Sen. Jackson asked commission staff to give a brief overview of the legislative proposal from the Review of Engineering Work Working Group that Senator Bingham and Representative Millis led. The piece of legislation recommended was “Reform Agency Review of Engineering Work”.

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Rep. Harrison asked if the proposed legislation was removing agency oversight.

Rep. Millis asked for clarification.



Rep. Harrison stated that she thought only Professional Engineers could certify a plan, is there a removal of that certification process?

Rep. Millis responded that there is no removal of regulatory authority. This is further clarifying and not weakening their regulatory abilities.

Rep. Harrison asked the chair if we are going to hear from DENR about any of these.

Sen. Jackson responded that we can have public comment.

Mr. Jeff Cherry stated that on page two, we don't intend to limit the regulatory authority.

Sen. Jackson asked commission staff to give a brief overview of the legislative proposal from the Environmental Ordinance Working Group that Senator Brock and Representative McGrady led. The piece of legislation recommended was "Authority to Adopt Certain Ordinances".

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Rep. Harrison expressed concerns because it may be too far reaching. For example, the Town of Chapel Hill has legislation limiting pesticides.

Mr. Hudson stated that this legislation was modeled after the pesticide preemption.

Rep. Rick Caitlin asked about the dates November 1, 2014 and November 1, 2015?

Mr. Hudson responded that these are reporting dates. This is a report for this year and next.

Rep. Millis asked if private stakeholders would be able to weigh in pertaining to local ordinances.

Mr. Hudson stated that neither of these provisions directly speaks to that. Based on the information that the working group received, stakeholders will contact the Department of Agriculture and Consumer Services (DACS). One way they can bring issues to light is to contact DENR and DACS.

Rep. Millis asked if there are any suggestions for more public input.

Mr. Hudson stated that we could work with the sponsors to direct the agencies to include any public input that they receive.

Rep. Caitlin asked about new ordinances and if old ordinances before this date could be included?



Mr. Hudson stated that it could include old ordinances. DENR and DACS were looking at old ordinances. There is nothing that prohibits them from bringing them to the attention of the ERC. However, they will largely focus on anything new.

Mr. Hudson stated that all this does is bring it to the attention of the ERC. Nothing automatically happens.

Rep. Samuelson responded that these referenced DENR's comments on legislative proposals.

Sen. Jackson asked commission staff to give a brief overview of the legislative proposal titled "Reporting and Notice of Wastewater Spills".

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Mr. Hudson stated that this was in response to reports on the Haw River and Dan River spill. It tightens up reporting requirements. It directs a report to DENR on wastewater spills.

Rep. Harrison asked if this applies not just to wastewater treatment but to also to a coal ash spill.

Mr. Hudson stated that that is correct. There's one for wastewater spills and there's one that applies to all other types of spills.

Rep. Harrison stated that it seems that 24 hours is a long time in a situation where we have known toxins. Could we have a shorter notice requirement? I think the public should know sooner than 24 hours.

Rep. Samuelson stated that she understands Rep. Harrison's concerns about making it shorter. There are some practical reasons as to why it cannot start earlier. Our intent was to give adequate notice and not put undue burden on the reporting facilities.

Sen. Jackson asked Commission staff to give a brief overview of the legislative proposal titled "Amend Hotel Carbon Monoxide Alarm Requirement".

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Rep. Samuelson stated that this bill is geared towards helping make sure that people stay safe in tourist facilities.

Senator Ron Rabin asked what the consequences were if a hotel continues to receive violations??

Sen. Jackson stated that if it's not corrected within a certain number of days, they can be fined and charged.



Sen. Rabin stated that he agrees with letting them replace it within a certain number of days, however, what happens if the same problems repeatedly occur?

Sen. Jackson stated that they can lose their license if they don't correct these deficiencies.

Rep. Samuelson stated that they would get reported to the Health Department.

Sen. Jackson asked Commission staff to give a brief overview of the legislative proposal titled "Legislative Oversight of Fish and Wildlife Management".

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Rep. Samuelson stated that DENR had comments. DENR wanted to clarify and make things consistent. This bill may need some clarifying changes.

Sen. Jackson asked Commission staff to give a brief overview of the legislative proposal titled "Terminate Certain Executive Orders".

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Rep. Samuelson stated that this bill is both legislation and a placeholder. We will continue to work with the Governor on what he intended without unintentionally stepping on legislative authority.

Sen. Jackson stated that this is more or less a placeholder so we can continue to look at this.

Representative Jimmy Dixon asked if the Commission is expected to vote on this package of this legislation at the end of this meeting.

Sen. Jackson answered in the affirmative. This will be our recommendation.

Rep. Dixon asked if it would be possible to vote on this piece separately.

Sen. Jackson responded that the Chairs want to keep it together.

Rep. Dixon stated that we are still maintaining communications and that there has been or should have been ample time before we go to the formal execution of the Commission's report. This should have been explored in more detail. Discussions with the Governor should continue without placing this bill on the agenda.

Rep. Samuelson stated that we did notify the executive branch immediately after the executive order was issued, but Rep. Samuelson wasn't contacted about it until yesterday. Deadlines tend to drive discussion. Technically this is our last ERC legislative meeting. Our next meeting is on



April 22, 2014, which will only to deal with coal ash. We are continuing to work with the Governor and his staff. Most of these recommendations are not perfect. We need to keep moving because of the procedures in place with staff.

Rep. Hager stated that we have been working with the Governor for several months on this. Until we get a final date, we will not receive any activity. We just want to move forward.

Rep. Dixon stated that he is in agreement with everything that's been said. Perhaps some of us on the Commission could have helped with negotiations.

Rep. Harrison asked if there will there be legislation from the April 22 meeting.

Rep. Samuelson stated that we can put it in the current legislation. The legislation on notification would be an acceptable vehicle.

Rep. Harrison asked if the procedure would be to do it in the Commission meeting.

Rep. Samuelson stated that the 22nd meeting would just be an update.

Rep. Caitlin asked if the Commission could get the details on the executive order.

Mr. Hudson responded that from our perspective the executive order does contradict House Bill 74.

Ms. Jennifer McGinnis was asked to give a summary of Executive Order 22 and the provisions that were enacted.

Rep. Dixon stated that he has a copy of the executive order.

Rep. Samuelson stated that we wanted to make sure the troopers can determine if it's water from rain or a leak that shouldn't be there. We have to figure out how to clarify what is intended.

Rep. Caitlin asked if the Commission of Public Health has finished their rules yet?

Ms. McGinnis stated that the rule has not been adopted.

Rep. Dixon stated that it appears that the executive order was an order to clarify so that the troopers will understand what the General Assembly can expect them to do.

Rep. Chuck McGrady stated that he is uncomfortable with the Governor overriding a piece of legislation he doesn't like.



Sen. Jackson asked Commission staff to give a brief overview of the legislative proposal titled “State Nature and Historic Preserve Deletions”.

Sen. Jackson thanked staff for their report and asked members if there were any questions.

Rep. Harrison asked for clarification on the Gorgeous State Park?

Ms. McGinnis stated that its seven acres for a right-of-way.

Senator Austin Allran asked if these changes are non-controversial.

Ms. McGinnis stated that this is my understanding.

Sen. Jackson asked Commission staff to give a brief overview of the Environmental Review Commission Report to the 2014 Regular Session of 2013 General Assembly.

Sen. Jackson thanked staff for their report and asked members if there were any questions.

With none being asked, Sen. Jackson made a motion that the report be approved.

Rep. McGrady made the motion that the report be approved and Rep. Hager provided the second.

There being no further business, the meeting adjourned at 9:24 AM.

Senator Brent Jackson, Presiding

Towers Mingledorff, Committee Clerk